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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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|---------------------------|---|
| Proceeding | 92055643 |
| Party | Plaintiff Monster Cable Products, Inc |
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| Submission | Motion for Summary Judgment |
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In the United States Patent and Trademark Office
Before the Trademark Trial and Appeal Board

MONSTER CABLE PRODUCTS, INC.,

Petitioner,

v.

NEOVICTORY TECHNOLOGY CO., LTD.,

Registrant.

Cancellation No.: 92055643

Registration No.: 3737908

Registration Date: Jan. 12, 2010

Mark: NEOVICTORY

**PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN
SUPPORT OF PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

Petitioner Monster Cable Products, Inc. ("Monster") hereby moves the Trademark Trial and Appeal Board ("the Board") for summary judgment, pursuant to Fed. R. Civ. P. 56(a), Rule 2.127 of the Trademark Rules of Practice, and T.B.M.P. 528, against Registrant Neovictory Technology Co., Ltd. ("Registrant"), canceling Registrant's U.S. Registration No. 3,737,908 for the mark NEOVICTORY (the "Subject Registration"), registered on January 12, 2010 under Trademark Act § 1(a) (15 U.S.C. § 1051(a)), in International Class 9 for all goods identified in the Subject Registration on the grounds that Registrant's nonuse of the mark NEOVICTORY cannot be genuinely disputed and Monster is entitled to judgment as a matter of law. In the alternative, if in response to this motion Registrant comes forward with evidence of use sufficient to avoid the cancellation in whole of the Subject Registration, Monster requests cancellation in part to reflect Registrant's use. Monster's motion for summary judgment is based upon this brief, the accompanying Declaration of Julie E. Hofer ("Hofer Decl.") and attached evidence, the accompanying Requests for Admission, Set One ("RFA 1"), Requests for Admission, Set Two ("RFA 2"), Requests for Production of Documents, Set One ("RFP 1"), Requests for Production of Documents, Set Two ("RFP 2") and Interrogatories, Set One

("Interrogatories") served by Monster on Registrant in this proceeding, and such other and further evidence as may be considered by the Board.

I. FACTUAL AND PROCEDURAL BACKGROUND

Monster owns U.S. Trademark Application No. 85,231,780, filed on February 1, 2011 under Trademark Act § 1(b) (15 U.S.C. § 1051(b)), for the mark VICTORY in International Class 9 for audio speakers, electronic docking stations, and headphones. On May 2, 2011, Monster received a USPTO Office Action refusing registration of Monster's VICTORY mark under Trademark Act § 2(d) (15 U.S.C. 1052(d)) because of a likelihood of confusion with the Subject Registration. The refusal was made final on November 19, 2011. Monster then initiated this cancellation proceeding based on its investigation and resulting belief that Registrant had abandoned the NEOVICTORY mark, if ever Registrant had used it in United States commerce at all.

In the nearly 2 1/2 years since Monster commenced this cancellation action, Registrant has yet to come forward with any evidence of its use of the NEOVICTORY mark in United States commerce at any time, despite Monster's informal and formal requests. *See* Hofer Decl. at ¶¶ 4-9. Registrant also failed to serve any response to either of Monster's Requests for Admission, which directly addressed Registrant's nonuse of the mark. As a result, Registrant's nonuse stands admitted. T.B.M.P. 411.03.

Since Registrant's Answer on October 17, 2012, the parties have stipulated to multiple extensions and suspensions of this proceeding to facilitate settlement discussion. However, since February 10, 2014, Registrant has become completely unresponsive to Monster, further evidencing Registrant's apparent intent to abandon any rights in the Subject Registration. Hofer Decl. at ¶ 9. Proceedings resumed from the most recent suspension on August 10, 2014. Monster's testimony period commences on October 8, 2014.

II. UNDISPUTED MATERIAL FACTS

The following material facts are undisputed:

1. Monster owns U.S. Trademark Application No. 85,231,780 ("Monster's Application"). *See* Monster's Application.
2. Monster's Application was refused registration because of a likelihood of confusion with the Subject Registration. *See* Monster's Application file, namely Office Actions dated May 2, 2011 and Nov. 19, 2011.
3. Registrant owns the Subject Registration. *See* Subject Registration.
4. Registrant has not sold or transported any goods bearing the NEOVICTORY mark in commerce, as defined by Trademark Act § 45 (15 U.S.C. §1127). Hofer Decl. ¶¶ 7, 10, 11; RFA 1 at ¶ 1; RFA 2 at ¶¶ 1-9.
5. Registrant had not sold or transported any goods bearing the NEOVICTORY mark in commerce, as defined by Trademark Act § 45 (15 U.S.C. §1127), as of the date Monster filed the present petition for cancellation. Hofer Decl. ¶¶ 7, 10, 11; RFA 1 at ¶ 7; RFA 2 at ¶¶ 77-85.
6. Registrant has not sold or transported any good bearing the NEOVICTORY mark in commerce, as defined by Trademark Act § 45 (15 U.S.C. §1127), for at least 3 consecutive years prior to the filing of this motion for summary judgment. Hofer Decl. ¶¶ 7, 10, 11; RFA 2 at ¶¶ 153-162.

III. LEGAL ARGUMENT

A. Summary Judgment Standard

Summary judgment is appropriate in cases where the moving party establishes that there are no genuine disputes of material fact that require resolution at trial, and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a) ("The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law."); *see also*, TBMP § 528.01; *Celotex Corp. v. Catrett*, 477 U.S.

317, 322-23 (1986). When appropriate, the Board does not hesitate to dispose of cases on summary judgment. *Milliken & Company v. Image Indus., Inc.* 39 U.S.P.Q.2D 1192, 1196 (T.T.A.B. 1996)

Summary judgment in Board proceedings is designed to avoid useless trials where there is no genuine issue as to any material fact. See *Best Lock Corp. v. Schlage Lock Co.*, 413 F.2d 1195, 162 U.S.P.Q. 552 (C.C.P.A. 1969). The criteria of Fed. R. Civ. P. 56 apply. See T.B.M.P. 528. As such, once the moving party had met its initial burden of showing by the evidence that there is no genuine dispute as to any material fact, "it is incumbent upon the other side to come forward with countervailing evidence establishing a need for trial." *Fram Trak Industries, Inc. v. Wiretracks LLC*, 77 U.S.P.Q.2d 2000, 2006 WL 236416 (T.T.A.B. 2006) (summary judgment granted for cancellation petitioner on the issues of priority and likelihood of confusion); *Spin Physics, Inc. v. Matsushita Electric Industrial Co.*, 168 U.S.P.Q. 605 (T.T.A.B. 1970); T.B.M.P. 528.01, 528.05. A party opposing a motion for summary judgment cannot merely rely upon the allegations of its pleading and hold back its evidence. *Wilson Sporting Goods Co. v. Northwestern Golf Co.*, 172 U.S.P.Q. 182 (T.T.A.B. 1971) (motion for summary judgment granted for cancellation petitioner where registrant offered no counter affidavits); *Conde Nast Publications, Inc. v. Miss Quality, Inc.*, 170 U.S.P.Q. 364 (T.T.A.B. 1971); *Franz Volkl Ohg v. Volkl & Co. KG*, 173 U.S.P.Q. 765 (T.T.A.B. 1972) (summary judgment granted for opposer where applicant did not respond with affidavits).

For Principal Register Marks not yet five years on the register, like the Subject Registration, cancellation may be based on any ground in the Trademark Act that would have barred registration in the first instance, or any of the specified grounds the Trademark Act made applicable to cancellation of a registration "at any time." *International Order of Job's Daughters v. Lindeburg & Co.*, 727 F.2d 1087, 220 U.S.P.Q. 1017 (Fed. Cir. 1984) (for a Principal Register registration less than five years old, cancellation may be based upon any ground which would have prevented registration initially); 15 U.S.C.A. § 1064(3), (4), (5).

B. Registrant Never Used the NEOVICTORY Mark, Which Would Have Barred Registration In the First Instance.

All applicants under § 1 of the Trademark Act—whether based on use in commerce under § 1(a) or an "intent-to-use" under § 1(b)—must use the applied-for mark in commerce on or in connection with all the goods or services specified in the application prior to registration. T.M.E.P. § 901; 15 U.S.C. §1051; 37 C.F.R. §2.34(a)(1)(i); 37 C.F.R. §2.20. Thus, failure to actually use the mark in commerce on or in connection with such goods or services is grounds to bar registration in the first instance. Thus, in a use-based application, when at the time of registration there was no use on any of the goods or services specified, the application and resulting registration is void. *Grand Canyon West Ranch, LLC v. Hualapai Tribe*, 78 U.S.P.Q.2d 1696, 1697, 2006 WL 802407 (T.T.A.B. 2006) ("The case law is clear that holding an application to be void is an appropriate remedy when the pleaded ground either is fraud, or that the applicant has not used the applied-for mark on any of the goods or services identified in the application prior to the filing of the application."); *see also Aycock Engineering, Inc. v. Airflite, Inc.*, 560 F.3d 1350, 1357, 90 U.S.P.Q.2d 1301 (Fed. Cir. 2009) ("The registration of a mark that does not meet the use requirement is void ab initio."); *ShutEmDown Sports, Inc. v. Carl Dean Lacy*, 102 U.S.P.Q.2d 1036, 1045, 2012 WL 684464 (T.T.A.B. 2012) (failure to use the mark before the application date on any of the goods or services listed is void ab initio).

"Use" is defined by the Trademark Act as "the bona fide use of mark in the ordinary course of trade, and not merely to reserve a right in a mark." 15 U.S.C. § 1127; *see also Emergency One, Inc. v. American FireEagle, Ltd.*, 228 F.3d 531, 56 U.S.P.Q.2d 1343 (4th Cir. 2000) ("Thus, neither promotional use of the mark on goods in a different course of trade nor mere token use constitute 'use' under the Lanham Act One recycled American Eagle truck with an AMERICAN EAGLE nameplate over the course of three years is no more than token use which, standing alone, is legally insufficient to disprove abandonment."). A mark is deemed to be in "use" on goods, such as those claimed in the Subject Registration, when goods bearing the mark are sold or transported in commerce. 15 U.S.C. § 1127; *See, e.g., In re Bagel Factory*,

Inc., 183 U.S.P.Q. 553 (T.T.A.B. 1974). "Commerce" is defined as "all commerce which may lawfully be regulated by Congress," namely interstate, territorial, and between the United States and a foreign country. 15 U.S.C. § 1127.; T.M.E.P. 901.03. Further, for purposes of United States trademark rights, "use" means use in the United States, not use in other nations—shipments and sales between foreign nations do not establish trademark rights in the United States. *E.g.*, *Imperial Tobacco, Ltd., Assignee of Imperial Group PLC v. Philip Morris, Inc.*, 899 F.2d 1575, 14 U.S.P.Q.2d 1390 (Fed. Cir. 1990); *General Healthcare Ltd. v. Qashat*, 364 F.3d 332, 70 U.S.P.Q.2d 1566 (1st Cir. 2004) (Sales between the U.K. and Saudi Arabia did not constitute a "use in commerce" sufficient to trigger the Trademark Act or to establish trademark rights in the United States.)

All the evidence shows that Registrant never used the NEOVICTORY mark in United States commerce, prior to obtaining the Subject Registration or otherwise. Registrant has admitted it never sold or transported any goods bearing the NEOVICTORY mark in commerce, including in the United States, a territory of the United States, between the United States and a territory of the United States, or between the United States and a foreign country. RFA 1 at ¶ 1; RFA 2 at ¶¶ 1-9.¹ Furthermore, Monster's counsel informally investigated Registrant's use by researching NEOVICTORY products on the Internet, and was unable to find any evidence of any such products availability for purchase in the United States or online advertising directed to consumers in the United States. Hofer Decl. at ¶¶ 10-11. Indeed, Registrant's NEOVICTORY website appears to be targeted only to consumers in Taiwan and/or China and the United Kingdom. Hofer Decl. at ¶¶ 10-11; Monster's First Amend. Pet. to Cancel, filed herein Aug. 14,

¹ Monster directly requested Registrant's admissions that it never sold or transported any goods bearing the NEOVICTORY mark in commerce, including in the United States, a territory of the United States, between the United States and a territory of the United States, or between the United States and a foreign country. RFA 1 at ¶ 1; RFA 2 at ¶¶ 1-9. RFA 1 was served on January 10, 2014 and again on February 7, 2014, and RFA 2 was served on August 8, 2014. Even construing Registrant's response deadlines in the most favorable possible light, Registrant's responses were due no later than September 9, 2014—30 days after proceedings resumed on August 10, 2014. As Registrant failed to provide any response, these requested admissions are deemed admitted under Fed. R. Civ. P. 36.

2012. Even if Registrant has used its mark in foreign nations, this is not enough to establish trademark rights in the United States. *E.g.*, *General Healthcare*, 364 F.3d 332. The allegations of use in NEOVICTORY's pleading are insufficient to contradict this evidence. *Wilson Sporting Goods*, 172 U.S.P.Q. 182; *Conde Nast Publications*, 170 U.S.P.Q. 364; *Franz Volkl Ohg*, 173 U.S.P.Q. 765.

Registrant's failure to use the NEOVICTORY mark prior to its registration, if known, would have been grounds to bar registration in the first instance. Thus, the Board should cancel the Subject Registration.

C. Registrant Obtained Its Registration Fraudulently, Which Is Grounds for Cancellation At Any Time.

Additionally, Trademark Act § 14(3) specifies that a registration may be cancelled "at any time" when its registration was obtained fraudulently. Where it is subsequently proven that the applicant never used the term as a mark at all, or used the mark, but not on the goods listed in the registration (or not *all* of the goods listed on the registration), the registration may be canceled for fraud on the USPTO. 3 McCarthy on Trademarks and Unfair Competition §§ 31:72-73 (4th ed.). The registrant's fraudulent intent may be inferred from the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity. *Clontech Laboratories, Inc. v. Invitrogen Corp.*, 406 F.3d 1347, 1352, 74 U.S.P.Q.2d 1598 (Fed. Cir. 2005).

In this case, Registrant has admitted that it never used the NEOVICTORY mark in the United States. RFA 1 at ¶ 1; RFA 2 at ¶¶ 1-9. No one is in a better position than Registrant to know whether or not it has used its mark here or elsewhere. Thus, it can be inferred that Registrant made a material misrepresentation to the USPTO during the prosecution of its application regarding its use of the mark, with fraudulent intent.

The Board should therefore cancel the Subject Registration on grounds of Registrant's fraud on the USPTO.

D. Even If Registrant Used the NEOVICTORY Mark Prior to Its Registration, Registrant Has Since Abandoned the Mark.

Trademark Act § 14(3) also specifies that a registration may be cancelled "at any time" when the registered mark has been abandoned. 15 U.S.C. § 1064(3). Under Trademark Act § 45, a mark is deemed abandoned when its use has been discontinued with an intent not to resume. 15 U.S.C. § 1127. Intent not to resume use may be inferred from the circumstances, and nonuse for three consecutive years is *prima facie* evidence of abandonment. *Id.* Further, where a dearth of documents and witnesses as to use of a mark in years past makes it difficult to prove either use or nonuse of a mark, the decision maker is justified in drawing inferences from the evidence that does exist. 3 McCarthy on Trademarks and Unfair Competition § 17:9 (4th ed.); *Auburn Farms Inc. v. McKee Foods Corp.*, 51 U.S.P.Q.2d 1439, 1999 WL 588247 (TTAB 1999) (the party asserting that the mark was in use failed to present evidence from customers, people who worked producing the product, people who made labels for the product and distributors in the chain of distribution of the product).

Even if Registrant made some use of its mark in the United States prior to obtaining its registration, all the evidence shows that Registrant has abandoned the NEOVICTORY mark. Registrant has admitted that it has not sold or transported any goods bearing the NEOVICTORY mark in commerce, as defined by Trademark Act § 45 (15 U.S.C. §1127), for at least 3 consecutive years prior to the filing of this motion for summary judgment. RFA 2 at ¶¶ 153-162. The informal investigation of Monster's counsel since the commencement of this action has yielded no evidence of use in the United States, and indeed Registrant has come forward with no such evidence despite Monster's repeated requests. Hofer Decl. at ¶ 8; Monster's First Amend. Pet. to Cancel; RFA1; RFA2. The allegations of use in NEOVICTORY's pleading are insufficient to contradict this evidence. *Wilson Sporting Goods*, 172 U.S.P.Q. 182; *Conde Nast Publications*, 170 U.S.P.Q. 364; *Franz Volkl Ohg*, 173 U.S.P.Q. 765.

Thus, the Board should cancel the Subject Registration on grounds of Registrant's abandonment of the NEOVICTORY mark (if ever it established rights to the mark in the United

States in the first place).

IV. IF REGISTRANT COMES FORWARD WITH EVIDENCE OF USE, THE BOARD SHOULD PARTIALLY CANCEL THE SUBJECT REGISTRATION TO RESTRICT THE GOODS IDENTIFIED THEREIN

In the alternative, in the event that Registrant in response to this motion finally comes forward with some evidence of use of NEOVICTORY in the United States (both currently and at the time of registration sufficient to avoid the registration being void in the first instance), then Monster moves for summary judgment partially cancelling the Subject Registration under Trademark Act § 18 (15 U.S.C. § 1068) to restrict the goods identified therein and thus resolve any likelihood of confusion between Monster's applied-for VICTORY mark and the Subject Registration. Specifically, Monster requests that the Board modify the goods under Subject Registration to delete all goods on which Registrant is not using the mark, and to identify any remaining goods on which Registrant is actually using the mark with greater particularity in terms of type, use, channels of trade, etc. *See* T.B.M.P. 309.03(d).

All the evidence thus far in this proceeding, including Registrant's admissions, the dearth of evidence of use produced by Registrant, Registrant's more than 7 months of non-responsiveness, and Monster's own investigation, point to the conclusion that Registrant is not, and never has, used the Neovictory mark in United States commerce. However, even if Registrant comes forward to oppose this motion with actual, concrete evidence of use, as opposed to mere allegations, the goods under the Subject Registration should still be substantially restricted to reflect the nature of use made by Registrant at the present time. T.B.M.P. 309.03(d).

Registrant's NEOVICTORY website (which appears to solely target consumers in Taiwan and/or China and the United Kingdom) identifies only three product types associated with the NEOVICTORY mark: (1) bone conduction Bluetooth sunglasses (product number S302), (2) bone conduction Bluetooth ski goggles (product numbers W301 and W303), and (3) bone conduction Bluetooth headsets (product numbers H401 and H501). Hofer Decl. ¶¶ 10-11 and Ex. D thereto. All of these products apparently incorporate "Bone Conduction Microphone"

technology. *Id.* None of the following goods from the Subject Registration appear to be currently offered under the mark: helmets; protection masks; goggles or safety goggles (other than ski goggles); optical devices, namely, glasses (other than sunglasses); swimming goggles; hydroscopes; accessories for sunglasses and eyeglasses, namely, cases and cords; camera; television sets; earphones; loud speakers; hand-held electronic games adapted for use with television receivers only; video output game machine for use with televisions; communication devices, namely, headphones and mobile phones; and integrated circuits.

Thus, in the event Registrant produces some evidence that it is using the NEOVICTORY mark in the United States (and not solely in Taiwan and/or China and the United Kingdom) in connection with bone conduction Bluetooth sunglasses, bone conduction Bluetooth ski goggles, and bone conduction Bluetooth headsets, it would still appear necessary to substantially restrict the goods description under the Subject Registration to reflect Registrant's current products. T.B.M.P. 309.03(d)("In considering a restriction of a registration, the Board will look to the nature of the use made by registrant as of the time the restriction is sought, not as of the time registration was sought.") Monster suggests the following revision:

Protection devices, namely, ~~helmets, protection masks, snow goggles, goggles, safety goggles,~~ incorporating short-range wireless communication equipment and bone conduction microphones; ~~optical devices, namely, glasses; swimming goggles; hydroscopes;~~ sunglasses, incorporating short-range wireless communication equipment and bone conduction microphones; ~~accessories for sunglasses and eyeglasses, namely, cases and cords; camera; television sets; earphones; loud speakers;~~ bone conduction microphones; ~~hand held electronic games adapted for use with television receivers only; video output game machine for use with televisions; communication devices, namely, headphones and mobile phones; and integrated circuits~~²

This revision would avoid any likelihood of confusion with Monster's application for registration of the mark VICTORY in International Class 9 for **audio speakers, electronic**

² It appears that Registrant's third type of NEOVICTORY product, bone conduction Bluetooth headsets, would not fall within the goods previously identified in the Subject Registration.

docking stations, and headphones, none of which is covered by the above-modified goods description.

V. CONCLUSION

For the foregoing reasons, Registrant's nonuse of the NEOVICTORY mark cannot be genuinely disputed, and Monster requests entry of judgment cancelling the Subject Registration as a matter of law. In the alternative, if in response to this motion Registrant comes forward with evidence of use sufficient to avoid cancellation in whole of the Subject Registration, Monster requests cancellation in part to reflect Registrant's use.

Dated: September 22, 2014

By: /Julie E. Hofer/

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Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing Petitioner's Motion for Summary Judgment and Memorandum in Support of Petitioner's Motion for Summary Judgment and the accompanying Declaration of Julie E. Hofer in Support of Petitioner's Motion for Summary Judgment has been served on NEOVICTORY TECHNOLOGY CO., LTD. by e-mail copy provided pursuant to Trademark Rule 2.119(b)(6), as mutually agreed upon by the parties, to counsel for NEOVICTORY TECHNOLOGY CO., LTD., Lin-Yun Cheng of Pro-TECHTOR International Services at linyun49@gmail.com.

Dated: September 22, 2014

By: /Julie E. Hofer/
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In the United States Patent and Trademark Office
Before the Trademark Trial and Appeal Board

MONSTER CABLE PRODUCTS, INC.,

Petitioner,

v.

NEOVICTORY TECHNOLOGY CO., LTD.,

Registrant.

Cancellation No.: 92055643

Registration No.: 3737908

Registration Date: Jan. 12, 2010

Mark: NEOVICTORY

**DECLARATION OF JULIE E. HOFER IN SUPPORT OF PETITIONER'S MOTION
FOR SUMMARY JUDGMENT**

I, Julie E. Hofer, declare:

1. I am an attorney at law duly admitted to practice before all courts of the State of California and am a partner with the firm of Donahue Fitzgerald LLP ("Donahue"), the attorneys for MONSTER, INC., previously known as MONSTER CABLE PRODUCTS, INC., ("Monster") in the above-referenced matter.

2. In or around October 2012, Donahue was retained by Monster as co-counsel in this matter, and Donahue obtained copies of the case file from co-counsel 321 Law, Inc. and prior counsel Davis & Leonard, LLP.

3. Donahue appeared as co-counsel of record in this matter on November 16, 2012.

4. On January 10, 2014, I sent an email to Lin-Yun Cheng, counsel for NEOVICTORY TECHNOLOGY CO., LTD. ("Registrant"), electronically serving, per the parties' agreement, the following discovery: Monster's First Set of Requests for Production of Documents to Registrant dated January 10, 2014 and Interrogatories by Monster to Registrant, Set One, dated January 10, 2014. A true and correct copy of this email and the subject discovery

is attached as **Exhibit A**.

5. On February 7, 2014, I sent an email to Mr. Cheng electronically serving, per the parties' agreement, the following discovery: Monster's Second Set of Requests for Production of Documents to Registrant dated February 7, 2014 and Monster's First Set of Requests for Admissions to Registrant dated February 7, 2014. A true and correct copy of this email and the subject discovery is attached as **Exhibit B**.

6. On August 8, 2014, my associate Carolyn E. Barreno, Esq., sent an email to Mr. Cheng electronically serving, per the parties' agreement, the following discovery: Monster's Second Set of Requests for Admission to Registrant dated August 8, 2014. I was copied on this email. A true and correct copy of this email and the subject discovery is attached as **Exhibit C**.

7. My office has received no responses from Registrant to any of the above-identified discovery.

8. In addition to the above-identified discovery, I have made several informal requests to Mr. Cheng for some evidence that Registrant had actually been using the NEOVICTORY mark in connection with the goods identified in Registrant's U.S. Registration No. 3,737,908 (the "Subject Registration"), including on January 7, 2014, February 10, 2014, March 15, 2014, March 31, 2014, July 10, 2014, and July 21, 2014. My office received no evidence or information in response to these requests either.

9. I last spoke with Mr. Cheng on February 10, 2014, in which we discussed the most recent 6-month suspension of this matter. Since that date, I have made several attempts to contact Mr. Cheng, including emails on March 15, 2014, March 31, 2014, July 10, 2014, and July 21, 2014. I have received no response or other contact from Mr. Cheng since February 10, 2014.

10. On or about September 9, 2014, my law firm used a computer to access the Internet to conduct search for "Neovictory." The only specific sites found during the search that appear to be connected with Registrant are (1) Registrant's NEOVICTORY website at <http://www.neovictory.com/> ("Website"), and (2) Registrant's "BonSayOn" Facebook® page

(linked from the Website) ("Page"). The Website appears to be in Chinese, with an English option for the "United Kingdom." The products offered appear to be branded "BonSayOn." The Page appears only in Chinese. Pertinent screenshots of the Website and Page are attached hereto as **Exhibit D**.

11. In light of these facts, I assert in good faith that Registrant is not using the NEOVICTORY mark in connection with goods identified in the Subject Registration in United States commerce, and that any use of the NEOVICTORY mark by Registrant is in Taiwan and/or China and the United Kingdom, and solely in connection with bone conduction Bluetooth sunglasses, bone conduction Bluetooth ski goggles, and bone conduction Bluetooth headsets.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statement and the like may jeopardize the validity of the application or the document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Dated: September 22, 2014



Julie E. Hofer

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MONSTER CABLE PRODUCTS, INC.,

Petitioner,

v.

NEOVICTORY TECHNOLOGY CO., LTD.,

Registrant.

Cancellation No.: 92055643

Registration No.: 3737908

Registration Date: Jan. 12, 2010

Mark: NEOVICTORY

**PETITIONER MONSTER CABLE PRODUCTS, INC.'S FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS TO REGISTRANT NEOVICTORY
TECHNOLOGY CO., LTD.**

Pursuant to Title 37, Section 2.120 of the Code of Federal Regulations, Rule 34 of the Federal Rule of Civil Procedure, and Section 406 of the Trademark Trial and Appeal Board Manual of Procedure, Petitioner, MONSTER CABLE PRODUCTS, INC. ("**Petitioner**"), hereby serves Petitioner's First Set of Requests for Production of Documents to Registrant ("**Requests**") to be answered by Registrant, NEOVICTORY TECHNOLOGY CO., LTD. ("**Registrant**"), said responses and documents to be served upon Monster within the time provided by the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

For purposes of these Requests, the following instructions and definitions shall apply:

INSTRUCTIONS

1. These Requests are continuing and require supplemental responses under Rule 26 of the Federal Rules of Civil Procedure.
2. Whenever subsections are used in a Request, You are to provide the information requested by the Request as it applies to each subsection.

3. If any privilege is claimed with respect to any Document, identify the Document, and state the privilege claimed and the bases therefor.

DEFINITIONS

1. The terms "You" and "Your" refer to and include Registrant and all of its officers, directors, members, employees, agents, representatives, and Persons acting on Registrant's behalf, including attorneys, as well as predecessor and successor entities, partnerships, subsidiaries, divisions, and related business organizations.

2. The term "Person" includes a natural person and a juristic person. The term "juristic person" includes a firm, corporation, union, association, or other organization capable of suing and being sued in a court of law.

3. Reference to any Person includes that Person's officers, directors, members, employees, agents, representatives, and Persons acting on that Person's behalf, including attorneys, as well as predecessor and successor entities, partnerships, subsidiaries, divisions and related business organizations.

4. The term "Date" means the exact day, month, and year if ascertainable; only if not ascertainable, then the closest approximation that can be made thereto in terms of months and years, seasons, or relation to other events or matters.

5. The term "Document" has the broadest meaning which can be ascribed to it under Federal Rule of Civil Procedure 34, including electronically stored information and all "writings" and "recordings" as defined in Federal Rule of Evidence Code 1001(1). Among other things, the term "Document" means the final form and all drafts and revisions of any kind of written or graphic matters, original or reproduced copy, however produced or reproduced, of any kind and of every kind, and all copies thereof which are different in any way from the original, regardless of whether designated "confidential," "privileged," or otherwise restricted. Without

limiting the generality of the foregoing, the term “Document” also includes information stored or maintained on, or which could be reproduced from film, microfilm, computer printout, computer e-mail systems of all types, magnetic tape, cassette, phonographic disc, videotape, or similar means, and objects such as letters, memoranda, stationary, business cards, advertisements, brochures, purchase and sale records, boxes and packages, and facsimile and e-mail communications.

6. The phrase “Relating To” means pertaining to, referring to, alluding to, constituting, supporting, showing, reflecting, evidencing, analyzing, or describing the subject matter, directly or indirectly, in whole or in part.

7. The singular form of a word (*e.g.*, “Document” or “Person”) shall also refer to the plural, and words used in the masculine, feminine or neuter gender refer to and include all genders.

8. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to bring within the Request all information which might otherwise be construed as outside its scope.

9. The term “Mark” refers to source identifiers used in connection with goods or services, and specifically includes trademarks, service marks, word marks, design marks, logos, slogans, company names, house marks, trade names, trade dress, and color marks.

10. The term “Petitioner’s Mark” means the Mark VICTORY that is the subject of U.S. Trademark Application Serial No. 85,231,780.

11. The term “NEOVICTORY” means the Mark NEOVICTORY that is the subject of U.S. Trademark Registration No. 3,737,908.

REQUESTS FOR PRODUCTION

1. All Documents identified in Your responses to Petitioner Monster Cable Products, Inc.'s First Set of Interrogatories to Registrant NeoVictory Technology Co., Ltd. (the **"Interrogatories"**).
2. All Documents relied upon by You in preparing Your responses to the Interrogatories.
3. All Documents evidencing the first use of NEOVICTORY by You or any licensee of You in connection with each of the goods described in U.S. Trademark Registration No. 3,737,908.
4. All Documents evidencing the first use in commerce of NEOVICTORY by You or any licensee of You in connection with each of the goods described in U.S. Trademark Registration No. 3,737,908.
5. All Documents Relating To any use of NEOVICTORY by You or any licensee of You.
6. All Documents Relating To any enforcement by You of Your exclusive rights in NEOVICTORY, including but not limited to every objection made by You to any third-party use of any Mark believed or alleged by You to be confusingly similar to NEOVICTORY.
7. All Documents Relating To Your ownership of or rights in NEOVICTORY.
8. All Documents Relating To any actual confusion between NEOVICTORY and Petitioner's Mark.
9. All Documents Relating To any likelihood of confusion between NEOVICTORY and Petitioner's Mark.
10. All Documents Relating To the identification of the classes of actual and potential purchasers of the goods sold or transported, or to be sold or transported, under NEOVICTORY,

including but not limited to:

- a. The classes of purchasers by whom the goods are intended to be purchased or used;
- b. The classes of purchasers to whom the goods are marketed;
- c. The classes of purchasers who are or will be exposed to the goods, regardless of whether the goods are marketed directly to or designed specifically for that group or person; and
- d. The potential classes of purchasers to whom You intend to offer the ability to purchase or use the goods in the future.

11. All computations, summaries, or tabulations Relating To annual sales of all goods sold or transported under NEOVICTORY, from the Date NEOVICTORY was first used by You or Your licensee, and through the present. If such computations, summaries, or tabulations are unavailable, produce all Documents from which such annual sales can be ascertained.

12. All computations, summaries, or tabulations Relating To any advertising, marketing, or promotional costs expended in connection with NEOVICTORY or the goods sold or transported under NEOVICTORY, from the Date NEOVICTORY was first used by You or Your licensee, and through the present. If such computations, summaries, or tabulations are unavailable, produce all Documents from which such costs can be ascertained.

13. At least one sample of each advertisement, brochure, order form, trade show handout or display, or other direct marketing Document bearing NEOVICTORY that has been exposed to actual or potential purchasers of the goods sold or transported under NEOVICTORY, from the Date NEOVICTORY was first used by You or Your licensee, and through the present.

14. All Documents submitted by You to, or received by You from, any federal, state or local agency, or the foreign equivalent of such agency, in connection with any registration or

application to register NEOVICTORY, or any related Mark, as a Mark.

15. At least one sample of each catalog, catalog sheet, product sheet, price list and other Document that shows the prices for any and all goods sold or transported under NEOVICTORY, from the Date NEOVICTORY was first used by You or Your licensee, and through the present.

16. All publicity (whether solicited or unsolicited) and press releases Relating To any and all goods sold or transported under NEOVICTORY, from the Date NEOVICTORY was first used by You or Your licensee, and through the present.

17. All Documents Relating To any third-party use, intention to use, registration, or licensing of NEOVICTORY, or any variation thereof, as a Mark, including but not limited to any license, concurrent use, or consent agreement, or any restriction on use.

18. All Documents Relating To the channels of distribution for the goods sold or transported under NEOVICTORY, from the Date NEOVICTORY was first used by You or Your licensee, and through the present, including but not limited to Documents identifying any and all distributors, retail outlets, and mail order catalogs from which NEOVICTORY goods can be purchased.

19. All Documents Relating To the conditions under which sales are made to purchasers of any and all goods sold or transported under NEOVICTORY, from the Date NEOVICTORY was first used by You or Your licensee, and through the present.

20. All Documents Relating To any plan or intent to expand the goods and/or services to be offered under NEOVICTORY in the future.

21. All Documents Relating To any discontinuation or interruption of Your use of NEOVICTORY in connection with any of the goods described in U.S. Trademark Registration No. 3,737,908.

22. All Documents that Relate To the facts upon which You base Your denial that You failed to use NEOVICTORY in commerce.

23. All Documents that Relate To the facts upon which You base Your claim that You have never abandoned NEOVICTORY.

24. All Documents that Relate To the facts upon which You base Your claim that You have continually and effectively used NEOVICTORY in commerce since October 13, 2009 to the present.

Respectfully submitted,

Dated: January 10, 2014

By: Julie E. Hofer/

Julie E. Hofer, CA Bar No. 152185
DONAHUE GALLAGHER WOODS LLP
1999 Harrison Street, 25th Floor
Oakland, California 94612-3520
Telephone: (510) 451-0544
Facsimile: (510) 832-1486

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served on NEOVICTORY TECHNOLOGY CO., LTD. by e-mailing said copy on January 10, 2014 to Registrant's counsel: Lin-Yun Cheng of Pro-TECHTOR International Services at linyun49@gmail.com.

By: Julie E. Hofer/

Julie E. Hofer, CA Bar No. 152185
DONAHUE GALLAGHER WOODS LLP
1999 Harrison Street, 25th Floor
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Email: julie@donahue.com

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MONSTER CABLE PRODUCTS, INC.,

Petitioner,

v.

NEOVICTORY TECHNOLOGY CO., LTD.,

Registrant.

Cancellation No.: 92055643

Registration No.: 3737908

Registration Date: Jan. 12, 2010

Mark: NEOVICTORY

**PETITIONER MONSTER CABLE PRODUCTS, INC.'S FIRST SET OF
INTERROGATORIES TO REGISTRANT NEOVICTORY TECHNOLOGY CO., LTD.**

PLEASE TAKE NOTICE THAT pursuant to Title 37, Section 2.120 of the Code of Federal Regulations, Rule 33 of the Federal Rules of Civil Procedure, and Section 405 of the Trademark Trial and Appeal Board Manual of Procedure, Petitioner MONSTER CABLE PRODUCTS, INC. (“**Petitioner**”), hereby serves upon Registrant NEOVICTORY TECHNOLOGY CO., LTD. (“**Registrant**”) the following interrogatories (“**Interrogatories**”), to be answered by Registrant, under oath, within the time specified in those rules.

For purposes of these Interrogatories, the following instructions and definitions shall apply:

INSTRUCTIONS

1. These Interrogatories are continuing and require supplemental responses under Rule 26 of the Federal Rules of Civil Procedure.
2. Whenever subsections are used in these Interrogatories, You are to provide the information requested by each Interrogatory as it applies to each subsection.
3. If any privilege is claimed with respect to any Document or communication,

identify the Document or communication (as directed in paragraph 6 of the Definitions), and state the privilege claimed and the bases therefor.

DEFINITIONS

1. The terms “You” and “Your” refer to and include Registrant and all of its officers, directors, members, employees, agents, representatives, and Persons acting on Registrant’s behalf, including attorneys, as well as predecessor and successor entities, partnerships, subsidiaries, divisions, and related business organizations.

2. The term “Person” includes a natural person and a juristic person. The term “juristic person” includes a firm, corporation, union, association, or other organization capable of suing and being sued in a court of law.

3. Reference to any Person includes that Person’s officers, directors, members, employees, agents, representatives, and Persons acting on that Person’s behalf, including attorneys, as well as predecessor and successor entities, partnerships, subsidiaries, divisions and related business organizations.

4. The term “Date” means the exact day, month, and year if ascertainable; only if not ascertainable, then the closest approximation that can be made thereto in terms of months and years, seasons, or relation to other events or matters.

5. The term “Document” has the broadest meaning which can be ascribed to it under Federal Rule of Civil Procedure 34, including electronically stored information and all “writings” and “recordings” as defined in Federal Rule of Evidence Code 1001(1). Among other things, the term “Document” means the final form and all drafts and revisions of any kind of written or graphic matters, original or reproduced copy, however produced or reproduced, of any kind and of every kind, and all copies thereof which are different in any way from the original, regardless of whether designated “confidential,” “privileged,” or otherwise restricted. Without

limiting the generality of the foregoing, the term "Document" also includes information stored or maintained on, or which could be reproduced from film, microfilm, computer printout, computer e-mail systems of all types, magnetic tape, cassette, phonographic disc, videotape, or similar means, and objects such as letters, memoranda, stationary, business cards, advertisements, brochures, purchase and sale records, boxes and packages, and facsimile and e-mail communications.

6. The terms "Identify" and "Identity," with respect to a Document (regardless of whether any claim of privilege is asserted), require that the following information be provided as to such Document:

- a. The general character of the Document (*e.g.*, a letter, memorandum, contract, e-mail, etc.);
- b. The Date it bears or, if undated, the Date upon which it was written or otherwise created;
- c. The Identity of the Person who wrote, authored or otherwise created or generated it;
- d. The Identity of the Person or Persons who received it or were intended to receive it;
- e. A summary of the subject matter of the Document;
- f. The name and address of the present or last known custodian of the Document; and
- g. The Date upon which the Document, or a copy thereof, was received by You or came to Your attention.

7. The terms "Identify" and "Identity," with respect to a Person, require that the Request response include all of the following that are applicable: the full name and title of that

Person; the present or last known address, including street, city, state, and zip code, of that Person; the employment of that Person at the time referred to in the Request response, including the name and address of the employer; the present employment of that Person, if different from the previously-stated employment; and the form or organization of that Person.

8. The phrase “Relating To” means pertaining to, referring to, alluding to, constituting, supporting, showing, reflecting, evidencing, analyzing, or describing the subject matter, directly or indirectly, in whole or in part.

9. The singular form of a word (*e.g.*, “Document” or “Person”) shall also refer to the plural, and words used in the masculine, feminine or neuter gender refer to and include all genders.

10. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to bring within the Interrogatory all information which might otherwise be construed as outside its scope.

11. The term “Mark” refers to source identifiers used in connection with goods or services, and specifically includes trademarks, service marks, word marks, design marks, logos, slogans, company names, house marks, trade names, trade dress, and color marks.

12. The term “Petitioner’s Mark” means the Mark VICTORY that is the subject of U.S. Trademark Application Serial No. 85,231,780.

13. The term “NEOVICTORY” means the Mark NEOVICTORY that is the subject of U.S. Trademark Registration No. 3,737,908.

INTERROGATORIES

1. State all facts upon which You base Your denial that You failed to use NEOVICTORY in commerce.

2. Identify all Documents that Relate To the facts upon which You base Your denial

that You failed to use NEOVICTORY in commerce.

3. Identify all witnesses with any knowledge of the facts upon which You base Your denial that You failed to use NEOVICTORY in commerce.

4. State all facts upon which You base Your claim that You have continually and effectively used NEOVICTORY in commerce since October 13, 2009 to the present.

5. Identify all Documents that Relate To the facts upon which You base Your claim that You have continually and effectively used NEOVICTORY in commerce since October 13, 2009 to the present.

6. Identify all witnesses with any knowledge of the facts upon which You base Your claim that You have continually and effectively used NEOVICTORY in commerce since October 13, 2009 to the present.

7. State the date of the first use of NEOVICTORY by You or any licensee of You in connection with each of the goods identified in U.S. Trademark Registration No. 3,737,908.

8. State the date of the first use in commerce in the United States of NEOVICTORY by You or any licensee of You in connection with each of the goods identified in U.S. Trademark Registration No. 3,737,908.

9. State all facts Relating To any discontinuation or interruption of Your use of NEOVICTORY in connection with any of the goods described in U.S. Trademark Registration No. 3,737,908.

10. Please describe any actual confusion between NEOVICTORY and Petitioner's Mark.

11. Please describe any likelihood of confusion between NEOVICTORY and Petitioner's Mark.

12. Please describe any and all classes of actual and potential purchasers of the goods

sold or transported under NEOVICTORY.

13. Please describe the channels of distribution for the goods sold or transported under NEOVICTORY, from the Date NEOVICTORY was first used by You or Your licensee, and through the present, including but not limited to any and all distributors, retail outlets, and mail order catalogs from which NEOVICTORY goods can be purchased.

14. Please describe the conditions under which sales are made to purchasers of any and all goods sold or transported under NEOVICTORY, from the Date NEOVICTORY was first used by You or Your licensee, and through the present.

15. Please describe the annual sales of all goods sold or transported under NEOVICTORY, from the Date NEOVICTORY was first used by You or Your licensee, and through the present. For purposes of this Interrogatory, "describe the annual sales" includes, but is not limited to, the following information: (a) the total number of units per year You have sold for each of the goods identified; (b) the revenue per year that You have received from such sales; and (c) the geographic location for the sales.

Respectfully submitted,

Dated: January 10, 2014

By: Julie E. Hofer/

Julie E. Hofer, CA Bar No. 152185
DONAHUE GALLAGHER WOODS LLP
1999 Harrison Street, 25th Floor
Oakland, California 94612-3520
Telephone: (510) 451-0544
Facsimile: (510) 832-1486

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Petitioner MONSTER CABLE PRODUCTS, INC.'S first set of Interrogatories to Registrant NEOVICTORY TECHNOLOGY CO., LTD. has been served on NEOVICTORY TECHNOLOGY CO., LTD. by e-mailing said copy on January 10, 2014, to Registrant's counsel: Lin-Yun Cheng of Pro-TECHTOR International Services at linyun49@gmail.com.

By: Julie E. Hofer/

Julie E. Hofer, CA Bar No. 152185
DONAHUE GALLAGHER WOODS LLP
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EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MONSTER CABLE PRODUCTS, INC.,

Petitioner,

v.

NEOVICTORY TECHNOLOGY CO., LTD.,

Registrant.

Cancellation No.: 92055643

Registration No.: 3737908

Registration Date: Jan. 12, 2010

Mark: NEOVICTORY

**PETITIONER MONSTER CABLE PRODUCTS, INC.'S SECOND SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS TO REGISTRANT NEOVICTORY
TECHNOLOGY CO., LTD.**

Pursuant to Title 37, Section 2.120 of the Code of Federal Regulations, Rule 34 of the Federal Rule of Civil Procedure, and Section 406 of the Trademark Trial and Appeal Board Manual of Procedure, Petitioner, MONSTER CABLE PRODUCTS, INC. ("**Petitioner**"), hereby serves Petitioner's Second Set of Requests for Production of Documents to Registrant ("**Requests**") to be answered by Registrant, NEOVICTORY TECHNOLOGY CO., LTD. ("**Registrant**"), said responses and documents to be served upon Monster within the time provided by the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

For purposes of these Requests, the following instructions and definitions shall apply:

INSTRUCTIONS

1. These Requests are continuing and require supplemental responses under Rule 26 of the Federal Rules of Civil Procedure.
2. Whenever subsections are used in a Request, You are to provide the information requested by the Request as it applies to each subsection.

3. If any privilege is claimed with respect to any Document, identify the Document, and state the privilege claimed and the bases therefor.

DEFINITIONS

1. The terms “You” and “Your” refer to and include Registrant and all of its officers, directors, members, employees, agents, representatives, and Persons acting on Registrant’s behalf, including attorneys, as well as predecessor and successor entities, partnerships, subsidiaries, divisions, and related business organizations.

2. The term “Person” includes a natural person and a juristic person. The term “juristic person” includes a firm, corporation, union, association, or other organization capable of suing and being sued in a court of law.

3. Reference to any Person includes that Person’s officers, directors, members, employees, agents, representatives, and Persons acting on that Person’s behalf, including attorneys, as well as predecessor and successor entities, partnerships, subsidiaries, divisions and related business organizations.

4. The term “Date” means the exact day, month, and year if ascertainable; only if not ascertainable, then the closest approximation that can be made thereto in terms of months and years, seasons, or relation to other events or matters.

5. The term “Document” has the broadest meaning which can be ascribed to it under Federal Rule of Civil Procedure 34, including electronically stored information and all “writings” and “recordings” as defined in Federal Rule of Evidence Code 1001(1). Among other things, the term “Document” means the final form and all drafts and revisions of any kind of written or graphic matters, original or reproduced copy, however produced or reproduced, of any kind and of every kind, and all copies thereof which are different in any way from the original, regardless of whether designated “confidential,” “privileged,” or otherwise restricted. Without

limiting the generality of the foregoing, the term “Document” also includes information stored or maintained on, or which could be reproduced from film, microfilm, computer printout, computer e-mail systems of all types, magnetic tape, cassette, phonographic disc, videotape, or similar means, and objects such as letters, memoranda, stationary, business cards, advertisements, brochures, purchase and sale records, boxes and packages, and facsimile and e-mail communications.

6. The phrase “Relating To” means pertaining to, referring to, alluding to, constituting, supporting, showing, reflecting, evidencing, analyzing, or describing the subject matter, directly or indirectly, in whole or in part.

7. The singular form of a word (*e.g.*, “Document” or “Person”) shall also refer to the plural, and words used in the masculine, feminine or neuter gender refer to and include all genders.

8. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to bring within the Request all information which might otherwise be construed as outside its scope.

9. The term “Mark” refers to source identifiers used in connection with goods or services, and specifically includes trademarks, service marks, word marks, design marks, logos, slogans, company names, house marks, trade names, trade dress, and color marks.

10. The term “Petitioner's Mark” means the Mark VICTORY that is the subject of U.S. Trademark Application Serial No. 85,231,780.

11. The term “NEOVICTORY” means the Mark NEOVICTORY that is the subject of U.S. Trademark Registration No. 3,737,908.

REQUESTS FOR PRODUCTION

1. If Your response to Request 1 of PETITIONER MONSTER CABLE PRODUCTS, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS TO REGISTRANT NEOVICTORY TECHNOLOGY CO., LTD. (the "Admissions") was not a full and unqualified admission, please produce all Documents relied upon in responding to Request 1 or that support in any way Your response to Request 1 and refusal to admit Request 1.

2. If Your response to Request 2 of the Admissions was not a full and unqualified admission, please produce all Documents relied upon in responding to Request 2 or that support in any way Your response to Request 2 and refusal to admit Request 2.

3. If Your response to Request 3 of the Admissions was not a full and unqualified admission, please produce all Documents relied upon in responding to Request 3 or that support in any way Your response to Request 3 and refusal to admit Request 3.

4. If Your response to Request 4 of the Admissions was not a full and unqualified admission, please produce all Documents relied upon in responding to Request 4 or that support in any way Your response to Request 4 and refusal to admit Request 4.

5. If Your response to Request 5 of the Admissions was not a full and unqualified admission, please produce all Documents relied upon in responding to Request 5 or that support in any way Your response to Request 5 and refusal to admit Request 5.

6. If Your response to Request 6 of the Admissions was not a full and unqualified admission, please produce all Documents relied upon in responding to Request 6 or that support in any way Your response to Request 6 and refusal to admit Request 6.

7. If Your response to Request 7 of the Admissions was not a full and unqualified admission, please produce all Documents relied upon in responding to Request 7 or that support in any way Your response to Request 7 and refusal to admit Request 7.

8. If Your response to Request 8 of the Admissions was not a full and unqualified admission, please produce all Documents relied upon in responding to Request 8 or that support in any way Your response to Request 8 and refusal to admit Request 8.

9. If Your response to Request 9 of the Admissions was not a full and unqualified admission, please produce all Documents relied upon in responding to Request 9 or that support in any way Your response to Request 9 and refusal to admit Request 9.

10. If Your response to Request 10 of the Admissions was not a full and unqualified admission, please produce all Documents relied upon in responding to Request 10 or that support in any way Your response to Request 10 and refusal to admit Request 10.

11. If Your response to Request 11 of the Admissions was not a full and unqualified admission, please produce all Documents relied upon in responding to Request 11 or that support in any way Your response to Request 11 and refusal to admit Request 11.

12. If Your response to Request 12 of the Admissions was not a full and unqualified admission, please produce all Documents relied upon in responding to Request 12 or that support in any way Your response to Request 12 and refusal to admit Request 12.

13. If Your response to Request 13 of the Admissions was not a full and unqualified admission, please produce all Documents relied upon in responding to Request 13 or that support in any way Your response to Request 13 and refusal to admit Request 13.

14. If Your response to Request 14 of the Admissions was not a full and unqualified admission, please produce all Documents relied upon in responding to Request 14 or that support in any way Your response to Request 14 and refusal to admit Request 14.

15. If Your response to Request 15 of the Admissions was not a full and unqualified admission, please produce all Documents relied upon in responding to Request 15 or that support in any way Your response to Request 15 and refusal to admit Request 15.

16. If Your response to Request 16 of the Admissions was not a full and unqualified admission, please produce all Documents relied upon in responding to Request 16 or that support in any way Your response to Request 16 and refusal to admit Request 16.

Dated: February 7, 2014

Respectfully submitted,

By: /Julie E. Hofer/

Julie E. Hofer, CA Bar No. 152185
DONAHUE GALLAGHER WOODS LLP
1999 Harrison Street, 25th Floor
Oakland, California 94612-3520
Telephone: (510) 451-0544
Facsimile: (510) 832-1486

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served on NEOVICTORY TECHNOLOGY CO., LTD. by e-mailing said copy on February 7, 2014 to Registrant's counsel: Lin-Yun Cheng of Pro-TECHTOR International Services at linyun49@gmail.com.

By: Julie E. Hofer/

Julie E. Hofer, CA Bar No. 152185
DONAHUE GALLAGHER WOODS LLP
1999 Harrison Street, 25th Floor
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Email: julie@donahue.com

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MONSTER CABLE PRODUCTS, INC.,

Petitioner,

v.

NEOVICTORY TECHNOLOGY CO., LTD.,

Registrant.

Cancellation No.: 92055643

Registration No.: 3737908

Registration Date: Jan. 12, 2010

Mark: NEOVICTORY

**PETITIONER MONSTER CABLE PRODUCTS, INC.'S FIRST SET OF REQUESTS
FOR ADMISSIONS TO REGISTRANT NEOVICTORY
TECHNOLOGY CO., LTD.**

TO: REGISTRANT NEOVICTORY TECHNOLOGY CO., LTD. AND ITS ATTORNEY OF RECORD, DONAHUE GALLAGHER WOODS LLP, 1999 HARRISON STREET, 25TH FLOOR, OAKLAND, CALIFORNIA 94612.

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and Trademark Trial and Appeal Board Manual of Procedure § 407, Petitioner, MONSTER CABLE PRODUCTS, INC. ("MONSTER"), hereby serves Petitioner's First Set of Requests for Admissions to be answered by Registrant, NEOVICTORY TECHNOLOGY CO., LTD. ("NEOVICTORY") under oath, said answers to be served upon MONSTER within the time provided by the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

DEFINITIONS

1. The terms "You," "Your" and "NEOVICTORY" refer to and include NEOVICTORY TECHNOLOGY CO., LTD. and all of its partnerships, subsidiaries, divisions, and related business organizations, as well as its directors, officers, partners, agents, employees, representatives, and attorneys. The terms also include all predecessors of NEOVICTORY.

2. The term "NEOVICTORY Mark" refers to the Mark NEOVICTORY, U.S. Trademark Registration No. 3,737,908.

REQUESTS FOR ADMISSIONS:

1. Admit NEOVICTORY has not sold any products containing the NEOVICTORY Mark in the United States.

2. Admit NEOVICTORY has not sold any communication devices containing the NEOVICTORY Mark in the United States.

3. Admit NEOVICTORY has not sold any headphones containing the NEOVICTORY Mark in the United States.

4. Admit NEOVICTORY has not sold any mobile phones containing the NEOVICTORY Mark in the United States.

5. Admit NEOVICTORY has not sold any speakers containing the NEOVICTORY Mark in the United States.

6. Admit NEOVICTORY has not sold any electronic docking stations containing the NEOVICTORY Mark in the United States.

7. Admit that as of May 21, 2012, NEOVICTORY had not sold any products containing the NEOVICTORY Mark in the United States.

8. Admit that as of May 21, 2012, NEOVICTORY had not sold any communication devices containing the NEOVICTORY Mark in the United States.

9. Admit that as of May 21, 2012, NEOVICTORY had not sold any headphones containing the NEOVICTORY Mark in the United States.

10. Admit that as of May 21, 2012, NEOVICTORY had not sold any mobile phones containing the NEOVICTORY Mark in the United States.

11. Admit that as of May 21, 2012, NEOVICTORY had not sold any speakers

containing the NEOVICTORY Mark in the United States.

12. Admit that as of May 21, 2012, NEOVICTORY had not sold any electronic docking stations containing the NEOVICTORY Mark in the United States.

13. Admit that all documents You have identified in response to Petitioner MONSTER's First Requests for Production of Documents to NEOVICTORY are genuine pursuant to the Federal Rules of Evidence.

14. Admit that all documents You have identified in response to Petitioner MONSTER's First Request for Production of Documents to NEOVICTORY are admissible pursuant to the Federal Rules of Evidence.

15. Admit that all documents You have identified in response to Petitioner MONSTER's Second Requests for Production of Documents to NEOVICTORY are genuine pursuant to the Federal Rules of Evidence.

16. Admit that all documents You have identified in response to Petitioner MONSTER's Second Requests for Production of Documents to NEOVICTORY are admissible pursuant to the Federal Rules of Evidence.

Respectfully submitted,

Dated: February 7, 2014

By: Julie E. Hofer/

Julie E. Hofer, CA Bar No. 152185
DONAHUE GALLAGHER WOODS LLP
1999 Harrison Street, 25th Floor
Oakland, California 94612-3520
Telephone: (510) 451-0544
Facsimile: (510) 832-1486

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served on NEOVICTORY TECHNOLOGY CO., LTD. by e-mailing said copy on February 7, 2014 to Registrant's counsel: Lin-Yun Cheng of Pro-TECHTOR International Services at linyun49@gmail.com.

By: Julie E. Hofer/

Julie E. Hofer, CA Bar No. 152185
DONAHUE GALLAGHER WOODS LLP
1999 Harrison Street, 25th Floor
Oakland, California 94612-3520
Telephone: (510) 451-0544
Facsimile: (510) 832-1486
Email: julie@donahue.com

EXHIBIT C

From: Carolyn E. Barreno
Sent: Friday, August 08, 2014 6:12 PM
To: linyun49@gmail.com
Cc: Julie E. Hofer
Subject: Monster Cable Products, Inc. v. Neovictory Technology Co., Ltd., Cancellation No. # 92055643
Attachments: Monster RFAs to Neovictory Set Two 8.8.14.pdf

Dear Lin-Yun,

Attached please find Monster's Second Set of Requests for Admission to Neovictory served electronically pursuant to agreement in the above-referenced TTAB Proceeding.

Thank you,

Carolyn

Carolyn E. Barreno, Esq.
Donahue Fitzgerald LLP



1999 Harrison Street 25th Floor, Oakland, California 94612-3520 | carolyn@donahue.com | (510) 451-3300

Important: This message, including any attached files, is being sent by or on behalf of a lawyer. It is probably confidential and may contain privileged information. If this email is not meant for you, please do not retain, read, copy or disseminate any part of it and please immediately notify us by email or at (510) 451-3300.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MONSTER CABLE PRODUCTS, INC.,

Petitioner,

v.

NEOVICTORY TECHNOLOGY CO., LTD.,

Registrant.

Cancellation No.: 92055643

Registration No.: 3737908

Registration Date: Jan. 12, 2010

Mark: NEOVICTORY

**PETITIONER MONSTER CABLE PRODUCTS, INC.'S SECOND SET OF REQUESTS
FOR ADMISSION TO REGISTRANT NEOVICTORY TECHNOLOGY CO., LTD.**

TO: REGISTRANT NEOVICTORY TECHNOLOGY CO., LTD. AND ITS
ATTORNEY OF RECORD, LIN-YUN CHENG, PRO-TECHTOR INTERNATIONAL
SERVICES, 20775 NORADA CT, SARATOGA, CA 95070 3018.

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and Trademark Trial and Appeal Board Manual of Procedure § 407, Petitioner, MONSTER CABLE PRODUCTS, INC. ("MONSTER"), hereby serves Petitioner's Second Set of Requests for Admission to be answered by Registrant, NEOVICTORY TECHNOLOGY CO., LTD. ("NEOVICTORY") under oath, said answers to be served upon MONSTER within the time provided by the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

DEFINITIONS

1. The terms "You," "Your" and "NEOVICTORY" refer to and include NEOVICTORY TECHNOLOGY CO., LTD. and all of its partnerships, subsidiaries, divisions, and related business organizations, as well as its directors, officers, partners, agents, employees, representatives, and attorneys. The terms also include all predecessors of NEOVICTORY.

2. The term "NEOVICTORY Mark" refers to the Mark NEOVICTORY, U.S. Trademark Registration No. 3,737,908.

REQUESTS FOR ADMISSION

1. Admit that NEOVICTORY has not sold any goods bearing the NEOVICTORY Mark in commerce, as defined by Section 45 of the Trademark Act, 15 U.S.C. §1127.
2. Admit that NEOVICTORY has not sold any goods bearing the NEOVICTORY Mark in a territory of the United States.
3. Admit that NEOVICTORY has not sold any goods bearing the NEOVICTORY Mark between the United States and a territory of the United States.
4. Admit that NEOVICTORY has not sold any goods bearing the NEOVICTORY Mark between the United States and a foreign country.
5. Admit that NEOVICTORY has not transported any goods bearing the NEOVICTORY Mark in commerce, as defined by Section 45 of the Trademark Act, 15 U.S.C. §1127.
6. Admit that NEOVICTORY has not transported any goods bearing the NEOVICTORY Mark across the border of any United States state.
7. Admit that NEOVICTORY has not transported any goods bearing the NEOVICTORY Mark in a territory of the United States.
8. Admit that NEOVICTORY has not transported any goods bearing the NEOVICTORY Mark between the United States and a territory of the United States.
9. Admit that NEOVICTORY has not transported any goods bearing the NEOVICTORY Mark between the United States and a foreign country.
10. Admit that NEOVICTORY has not sold any earphones bearing the NEOVICTORY Mark in commerce, as defined by Section 45 of the Trademark Act, 15 U.S.C. §1127.
11. Admit that NEOVICTORY has not sold any earphones bearing the NEOVICTORY Mark in the United States.
12. Admit that NEOVICTORY has not sold any earphones bearing the NEOVICTORY Mark in a territory of the United States.

13. Admit that NEOVICTORY has not sold any earphones bearing the NEOVICTORY Mark between the United States and a territory of the United States.

14. Admit that NEOVICTORY has not sold any earphones bearing the NEOVICTORY Mark between the United States and a foreign country.

15. Admit that NEOVICTORY has not transported any earphones bearing the NEOVICTORY Mark in commerce, as defined by Section 45 of the Trademark Act, 15 U.S.C. §1127.

16. Admit that NEOVICTORY has not transported any earphones bearing the NEOVICTORY Mark across the border of any United States state.

17. Admit that NEOVICTORY has not transported any earphones bearing the NEOVICTORY Mark in a territory of the United States.

18. Admit that NEOVICTORY has not transported any earphones bearing the NEOVICTORY Mark between the United States and a territory of the United States.

19. Admit that NEOVICTORY has not transported any earphones bearing the NEOVICTORY Mark between the United States and a foreign country.

20. Admit that NEOVICTORY has not sold any loud speakers bearing the NEOVICTORY Mark in commerce, as defined by Section 45 of the Trademark Act, 15 U.S.C. §1127.

21. Admit that NEOVICTORY has not sold any loud speakers bearing the NEOVICTORY Mark in a territory of the United States.

22. Admit that NEOVICTORY has not sold any loud speakers bearing the NEOVICTORY Mark between the United States and a territory of the United States.

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29. Admit that NEOVICTORY has not sold any microphones bearing the NEOVICTORY Mark in commerce, as defined by Section 45 of the Trademark Act, 15 U.S.C. §1127.

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39. Admit that NEOVICTORY has not sold any headphones bearing the NEOVICTORY Mark in commerce, as defined by Section 45 of the Trademark Act, 15 U.S.C. §1127.

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48. Admit that NEOVICTORY has not sold any mobile phones bearing the NEOVICTORY Mark in commerce, as defined by Section 45 of the Trademark Act, 15 U.S.C. §1127.

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57. Admit that NEOVICTORY has not sold any hand-held electronic games bearing the NEOVICTORY Mark in commerce, as defined by Section 45 of the Trademark Act, 15 U.S.C. §1127.

58. Admit that NEOVICTORY has not sold any hand-held electronic games bearing the NEOVICTORY Mark in the United States.

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62. Admit that NEOVICTORY has not transported any hand-held electronic games bearing the NEOVICTORY Mark in commerce, as defined by Section 45 of the Trademark Act, 15 U.S.C. §1127.

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66. Admit that NEOVICTORY has not transported any hand-held electronic games bearing the NEOVICTORY Mark between the United States and a foreign country.

67. Admit that NEOVICTORY has not sold any video output game machines bearing the NEOVICTORY Mark in commerce, as defined by Section 45 of the Trademark Act, 15 U.S.C. §1127.

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153. Admit that since August 1, 2011, NEOVICTORY has not sold any goods bearing the NEOVICTORY Mark in commerce, as defined by Section 45 of the Trademark Act, 15 U.S.C. §1127.

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177. Admit that since August 1, 2011, NEOVICTORY has not sold any loud speakers bearing the NEOVICTORY Mark between the United States and a foreign country.

178. Admit that since August 1, 2011, NEOVICTORY has not transported any loud speakers bearing the NEOVICTORY Mark in commerce, as defined by Section 45 of the Trademark Act, 15 U.S.C. §1127.

179. Admit that since August 1, 2011, NEOVICTORY has not transported any loud speakers bearing the NEOVICTORY Mark across the border of any United States state.

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183. Admit that since August 1, 2011, NEOVICTORY has not sold any microphones bearing the NEOVICTORY Mark in commerce, as defined by Section 45 of the Trademark Act, 15 U.S.C. §1127.

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203. Admit that since August 1, 2011, NEOVICTORY has not sold any mobile phones bearing the NEOVICTORY Mark in commerce, as defined by Section 45 of the Trademark Act, 15 U.S.C. §1127.

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213. Admit that since August 1, 2011, NEOVICTORY has not sold any hand-held electronic games bearing the NEOVICTORY Mark in commerce, as defined by Section 45 of the Trademark Act, 15 U.S.C. §1127.

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Dated: August 8, 2014

By: Carolyn E. Barreno/

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Attorneys for Petitioner MONSTER CABLE
PRODUCTS, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing Second Set of Requests for Admission has been served on NEOVICTORY TECHNOLOGY CO., LTD. by e-mailing said copy on August 8, 2014 to Registrant's counsel: Lin-Yun Cheng of Pro-

TECHTOR International Services at linyun49@gmail.com.

Dated: August 8, 2014

By: /Carolyn E. Barreno/

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EXHIBIT D



BonSayOn

Leader of Bone-Conduction chip solution.

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- 專利佈局
- 開發歷程
- 參展花絮

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- H501
- S302
- BonSayOn
- 專利佈局

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BONSAISON

Leader of Bone-Conduction chip solution.

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地址：台南市永華區中華路1-85號(金三角辦公大樓14樓)

BONSAYON

Communication in style

New Arrival

新品到



H501

精靈二重奏

輕鬆交談 享受純靜

BonSayOn Electronics

Bluetooth

+ Like + Follow + Message ...

About

BonSayOn於西元2004年11月成立，致力於骨傳導微晶傳音產品設計，以提供適當之解決方案於通信應用領域。

Description

BonSayOn於西元2004年11月成立，致力於骨傳導微晶傳音產品設計，以提供適當之解決方案於通信應用領域。
公司產品主要以外銷為主，為了回饋台灣，我們即將推出一款價格相當優惠的喉振式藍牙耳機，此款耳機主要應用於機車騎士上，於時速100公里仍可很清晰的通話，讓您在騎機車的時候完全沒有接聽電話的煩躁，同時也享受聽音樂的樂趣，腳踏車友也是非常的適合使用此產品。

Basic Info

| | |
|----------|--|
| Founded | November 2004 |
| Awards | 1. 2011台北國際體育用品展TaiSPO台灣品牌展實力 2. 2011台北國際體育用品展獲得卓越獎 3. 第七屆亞洲國際品牌體育用品及運動時尚博覽會觀展分享 |
| Products | 骨傳導太陽眼鏡、骨傳導耳鏡、喉震式藍牙耳機 |

Contact Info

Website <http://www.neovictory.com>

Life Events

2004 11月 Founded In November 2004

BONSayON
communication in style

H501
情靈二重奏

輕鬆交談 享受純靜

New Arrival
新品到



Cover Photo

BonSayOn
Electronics



BONSayON

BonSayOn

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Timeline About Photos Likes More

PEOPLE

6,977 likes

Invite your friends to like this Page

ABOUT

BonSayOn於西元2004年11月成立，致力於音響事業，
品傳音產品設計，以提供適當之解決方案於通信應用
領域。

http://www.neovictory.com/

Suggest Edits

BonSayOn shared a link.
August 31

Write something on this Page...

Post Photo/Video

戴上寶利萊鏡片眼鏡看就ok，因為LCD螢幕由藍綠紅（RGB）三原色來組合成我們看到的彩色世界，在LCD面板上每一小點大約600*600微米的大小（更細緻的面板會更小），每點大約是頭髮的截面寬，可以想到這3、4吋的面板上有多少點排在上面，這每點上又要分成RRGB（紅紅綠藍）四個位置，各別控制這4位置的亮點去調整這600*600微米大小的顏色和亮度，然後整片面板的彩色圖像就由每點的彩色與亮度組成，藍光在這裡是最常用到，但因波長較短頻率高（光速=頻率*波長），光速是固定值（3*10^8米/秒），所以藍光能量比較大（能量=普朗克常數*頻率），對眼球水晶體傷害更大些。這就是這篇文章所提（是看影片或是成人電影就是這情況啦），那